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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BENJAMIN SPARKS, an individual;

Plaintiffs,

vs.

CHRISTINA MAMER, an individual; and
RAMONA GIWARGIS, an individual,

Defendants.

Case No.: 2:20-cv-00661

**DEFENDANT CHRISTINA MAMER'S
REPLY TO PLAINTIFF'S RESPONSE TO
SPECIAL MOTION TO DISMISS
PURSUANT TO NRS 41.660**

CHRISTINA MAMER ("Defendant" or "Christina"), by and through her counsel of record, hereby files Defendant Christina Mamer's Reply to Plaintiff's Response to Special Motion to Dismiss Pursuant to NRS 41.660. This Reply is made and based on the Points and Authorities set forth below, the Declaration and/or Exhibits submitted herewith and any oral argument before the Court.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff's Response to the Special Motion to Dismiss actually illustrates why Defendant Christina Mamer's Special Motion to Dismiss is particularly appropriate to extricate herself from Plaintiff's retaliatory, vindictive and meritless lawsuit. After conceding, as he must, that there was in fact a "sex-contract" that he drafted, Mr. Sparks has doubled down on his efforts to control, punish, embarrass and/or otherwise humiliate Christina by filing a Response that goes

1 far afield of the allegations of the lawsuit that he filed and for which Christina is forced to
2 defend. Rather than focusing on the allegations of his own lawsuit, Mr. Sparks devotes the lions'
3 share of his Response to lashing out at Christina with a broad swath of false and legally
4 irrelevant details concerning Christina.

5 Simply put, this is a case that needs to be promptly put to a conclusion before further
6 harm occurs. Indeed, this is a case for which the anti-SLAPP statute that was enacted whereby a
7 summary-judgment-like proceeding occurs to allow the Court to vet the issues at an early
8 juncture of the case. Mr. Sparks fundamentally misapprehends the procedural posture of this
9 case and the fact that Christina's Motion is not premature under the anti-SLAPP statute (nor
10 must she file a separate Rule 12 or Rule 56 Motion).

11 Christina should prevail on the first prong of the anti-SLAPP analysis given that the
12 allegations of the Complaint are anti-SLAPP protected on a number of levels; namely, the matter
13 involves protected communications to law enforcement officials, protected communications
14 involving legal proceedings, protected communications involving matters of public
15 concern/domestic violence, and matters involving a public figure (Mr. Sparks). As discussed in
16 the Motion and this Reply, there should be no question that Christina satisfies the first prong of
17 the anti-SLAPP analysis.

18 With respect to the second prong of the anti-SLAPP analysis, Plaintiff does not even
19 come close to satisfying his burden to demonstrate that he has a probability of prevailing on his
20 claim.¹ Plaintiff's Response admits key facts. Aside from his admissions, Plaintiff's Response
21

22 ¹ Under established Ninth Circuit case law, summary judgment in favor of Defendant Mamer
23 would be appropriate as a result of Plaintiff's failure to support his Response with competent any
24 evidence. Moreover, in the anti-SLAPP context, a plaintiff is not allowed to rely on pleadings
alone. See, e.g., Wong v. Tai-Jing, 189 Cal. App. 4th 1354, 1368 (Cal. Ct. App. 2010).

1 avoids many arguments made by Christina. Moreover, the Response is unsupported with any
 2 Declarations or competent evidence to support his position.

3 **II. PLAINTIFF’S RESPONSE IS SIGNIFICANT FOR WHAT**
 4 **IT ADMITS AND/OR DOES NOT SAY, DISPUTE OR CONTAIN**

5 Before discussing the two prongs of the anti-SLAPP analysis, Christina will highlight, in
 6 bullet point fashion, various fundamental aspects of Plaintiff’s Response which should be kept in
 7 mind throughout the entirety of the Court’s analysis of this matter.

- 8 • As separately briefed, there was nothing improper with Christina’s removal of this
 9 action to Federal Court. She did not need to wait for the issuance of a summons
 and actual service of Plaintiff’s Complaint to seek redress in this matter,
 especially under the unique circumstances in this matter.
- 10 • There is nothing premature about the Special Motion to Dismiss. Plaintiff is
 11 correct at footnote 2 of his Response that Christina is asking the Court to treat this
 in summary judgment like fashion, which she has every right to do under the law.
- 12 • Plaintiff does not dispute the existence of a “sex-contract.” He now admits that a
 13 “sex-contract” does exist.
- 14 • Plaintiff does not dispute that he generated the “sex-contract.” He now admits to
 this fact.
- 15 • Plaintiff does not dispute that the fully executed “sex-contract” Christina
 16 submitted as Exhibit A-6 is a true and correct copy of the document the parties
 executed.
- 17 • Plaintiff’s Response conspicuously omits any Declaration from Mr. Sparks
 18 testifying to any issue under penalty of perjury.
- 19 • Plaintiff’s Response conspicuously omits exhibits or other materials to support the
 20 gratuitous innuendos and false accusations in footnotes and other places of the
 Response that are intended to harm Christina and even if true, have no relevance
 to Plaintiff’s Complaint.
- 21 • Plaintiff’s Response completely ignores competent evidence, presented by
 22 Christina, in the form of various exhibits to prove her points.
- 23 • Plaintiff’s Response does not dispute video footage of Plaintiff angrily charging
 24 towards Christina with his phone in his hand attempting to prevent her from
 escaping their residence on the final day a mere seven (7) minutes before he

1 reported to the police that Christina “had taken a handful of pills, locked herself in
2 her room and would not open the door.” See Exhibit A-8 at DEFM-000036.²

- 3 • Plaintiff’s Response ignores that the arriving officers noted that Christina did not
4 have any signs of being intoxicated or under the influence of narcotics. See
5 Exhibit A-7 at DEFM-000034.
- 6 • Plaintiff’s Response ignores that the officers noted visible injuries caused by
7 Plaintiff and found there was probable cause to arrest Plaintiff for domestic
8 violence. See Exhibit A-7 at DEFM-000034.
- 9 • Nowhere does Plaintiff dispute that on March 29, 2018, the Plaintiff caused injury
10 to both Defendant’s right middle fingernail and left thumb. Id. and See
11 Defendant’s Declaration at ¶32-34. Those injuries were readily apparent and
12 visible to the arriving officers, as noted in the March 29, 2018 Police Report. Id.
- 13 • Nowhere does Plaintiff dispute the March 29, 2018 Police Report stating, “She
14 [Defendant] [tried to] leave the apartment for the next 2 hours but Sparks would
15 not let her go.”
- 16 • Plaintiff admits to a prior injury to Christina’s fingernail, yet attempts to excuse
17 the matter, without a sworn statement, on a snag on a bedsheet.
- 18 • Plaintiff’s Response completely avoids, and does not dispute with sworn
19 testimony, the issue of Christina’s injuries to her head/eye resulting in substantial
20 bodily harm. More particularly, the Indictment attached to the Special Motion as
21 Ex. A-17 states that Plaintiff “did on or about March 2, 2018, willfully and
22 unlawfully use force or violence againstC.M. [Defendant] by punching the
23 said C.M. [Defendant] on or about the face and/or head resulting in substantial
24 bodily harm.” Christina suffered a retinal tear and has the medical records to
prove it in addition to her own testimony.
- Plaintiff’s Response fails to dispute the proposition, with sworn evidence or
otherwise, that he threatened to release the sex contract if Christina did not continue
the relationships. To be sure, Plaintiff makes this unsubstantiated accusation as to
Christina, but he never denies that he made those threats to Christina.
- Nowhere does Plaintiff dispute that he is a public figure.

² Notably, Plaintiff’s Response actually tries to mislead the Court by inferring that Plaintiff was not in the parties’ residence when he called 9-1-1 to report that Plaintiff was allegedly suicidal. His Response states, “Plaintiff left the residence where was residing with Ms. Mamer and never returned. Plaintiff contacted the police as he was worried that Defendant Mamer would kill herself.” See, Response at 4:20-23. In actuality, the surveillance video is consistent with Christina’s account that he was in the residence, and after preventing her from leaving, he falsely reported that Mamer was suicidal as he was leaving the scene to avoid arrest.

- Plaintiff acknowledges that statements that form the basis of his Complaint stemmed from a protected context (i.e. statements to the police, statements made in judicial proceedings, including grand jury testimony).

III. DEFENDANT’S SPECIAL MOTION TO DISMISS SHOULD BE GRANTED ON MULTIPLE INDEPENDENT GROUNDS

This Section of the Reply is intended to respond to the Reply and refocus the Court’s attention on the two factors of the anti-SLAPP analysis. First, Plaintiff’s claims are based on communications that fall within the anti-SLAPP statute’s coverage that were truthfully made and/or made without knowledge of falsehood. Second, Plaintiff’s Response completely fails to show with prima facie evidence a probability of prevailing on his claims in summary-judgment-like fashion.

A. Christina Satisfies the First Prong of the Anti-SLAPP Analysis.

Other than saying Christina is a liar without any competent proof, Plaintiff waits until page 13 of his Response to claim “[t]his case is not an Anti-SLAPP case” with a one page discussion relating thereto with virtually no citation to case law. Fundamentally, Christina satisfied the first prong of the anti-SLAPP burden shifting framework by attaching a detailed sworn declaration with supporting proof as to the truth and/or lack of knowledge of falsity of the subject matter of Plaintiff’s lawsuit.³

In addition to providing sufficient proof of the truth or lack of falsity to engage the burden shifting, both the opening Motion and this Reply provides the Court with ample case law to show that the law recognizes the protected anti-SLAPP nature of the communications at issue in this case. On the other hand, Plaintiff’s Response that has no case law to show any un-

³ Attached hereto as Ex. A is a short Declaration from Christina that further responds to matters raised in Plaintiff’s Response that are tied to the Complaint as opposed to the gratuitous far-sweeping irrelevant claims made by Plaintiff as to Christina.

1 protected nature of communications. To enhance the record, Christina provides the additional
 2 discussion of case law that further supports her position.

3 **1. Christina’s Statements to the Grand Jury Fall Within**
 4 **the Purview of NRS 41.637(3) and are Absolutely Privileged.**

5 Plaintiff’s Complaint as it pertains to Christina alleges that she defamed him through her
 6 statements to Las Vegas Metropolitan Police Department officers (“Metro”) and the Las Vegas
 7 Review Journal (“Review Journal”).⁴ While Plaintiff’s Complaint alleged that Christina made
 8 statements to Metro and the Review Journal that Plaintiff “kidnapped” her, tore off a fingernail
 9 that resulted in “substantial bodily harm,” and punched “her on or about the face and/or head
 10 resulting in substantial bodily harm,” Plaintiff’s Response does yet another about-face.

11 More specifically, Christina’s Special Motion to Dismiss set forth undisputable evidence
 12 that those statements were not made to Metro or the Review Journal. Instead, the allegations in
 13 Plaintiff’s Complaint, including at times the exact verbatim language in Plaintiff’s Complaint,
 14 originated from the transcript of Christina’s compelled testimony before the Clark County Grand
 15 Jury in December 2018, and/or the Indictment filed by the Clark County District Attorney’s
 16 Office in the Eighth Judicial District Court, State of Nevada in January 2019.

17 To Plaintiff’s credit, after being caught misrepresenting the source of the information in
 18 his Complaint, he concedes in his Response that a significant portion of the allegations in his
 19 Complaint that he claims are defamatory actually only exist in the transcript of Christina’s
 20 compelled Grand Jury testimony, or the Indictment filed by the Clark County District Attorney’s
 21 Office in the Eighth Judicial District Court, State of Nevada, in January 2019. Rather than
 22 taking the next step of conceding that Grand Jury testimony and/or the Indictment filed by the
 23 District Attorney’s office is smack-dab within the purview of NRS 41.637(3), Plaintiff attempts

24 ⁴ See, Plaintiff’s Complaint [ECF No. 1] at 6:15-7:4.

1 to argue that a grand jury proceeding is a quasi-judicial proceeding, without offering any
2 admissible evidence or case law to support this ridiculous proposition.

3 The powers and duties of grand juries are set forth in Chapter 172 of the Nevada Revised
4 Statutes. In fact, NRS 172.105 makes it clear that a grand jury may inquire into all public
5 offenses triable in the district court or in a Justice Court, committed within the territorial
6 jurisdiction of the district court for which it is impaneled. As such, a grand jury proceeding is
7 clearly a proceeding under NRS 41.637(3).

8 Next, Plaintiff argues, again with conclusory allegations not supported by any admissible
9 evidence, that Christina “lied under oath in front of the Grand Jury.” Christina’s declaration in
10 support of her special Motion to Dismiss clearly sets forth that her testimony before the Grand
11 Jury was true and correct to the best of her knowledge, and that Christina did not make any
12 statements with the knowledge of their falsity. Once Christina has established by a
13 preponderance of the evidence that Plaintiff’s claims arise from conduct covered by NRS
14 41.660, the burden shifts to Plaintiff to demonstrate with prima facie evidence that there is a
15 probability of prevailing on the claim.

16 Here, in addition to Christina’s declaration, she also submitted surveillance video footage
17 of Plaintiff angrily charging towards Christina with his phone in his hand attempting to prevent
18 her from escaping their residence on the final day a mere seven (7) minutes before he reported to
19 the police that Christina “had taken a handful of pills, locked herself in her room and would not
20 open the door.” See Exhibit A-8 at DEFM-000036. Plaintiff did not dispute the surveillance
21 video in his Response. Moreover, while Plaintiff’s response attempts to explain away an injury
22 to Christina’s nail as simply her losing an artificial fingernail by snagging it on a bed sheet, the
23 grand jury testimony clearly sets forth that was not the case. Instead, Plaintiff not only caused
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1 Christina's artificial nail to come off, he ripped her natural nail off completely down to the
2 nailbed below the cuticle.⁵ Finally, Plaintiff claims, again without admissible evidence, that
3 Christina's testimony to the Grand Jury regarding the permanent injury Plaintiff inflicted on her
4 eye was false because it was pre-existing condition. Christina has no knowledge of ever being
5 treated for any condition akin to a retinal tear at any time during her adult life.

6 Furthermore, Plaintiff did not submit any admissible evidence. Instead, Plaintiff
7 submitted thirteen pages (13) of conclusory allegations, without evidentiary support, and then
8 tries to rely on the allegations in his Complaint to demonstrate that he has a probability of
9 prevailing on the claim, which is not permissible. Woong v. TaiJing, 189 Cal. App. 4th 1354,
10 1368 (2010). This is likely due to the fact that Plaintiff knew that a trial witness has absolute
11 immunity with respect to any claim based on the witness' testimony. Rehberg v. Paulk, 132 S.
12 Ct. 1497, 182 L. Ed. 2d 593 (2012). Grand jury witnesses also enjoy the same immunity as
13 witnesses at trial; this means that a grand jury witness has absolute immunity based on the
14 witness' testimony.

15 **2. Any Statements Christina Mamer to the District Attorney's Office**
16 **During their Investigation Fall Under NRS 41.637(3) and are**
Absolutely Privileged.⁶

17 As outlined above, Plaintiff's Complaint alleges that Christina defamed him through her
18 statements to Las Vegas Las Vegas Metropolitan Police Department officers ("Metro") and the
19 Las Vegas Review Journal ("Review Journal"). However, when faced with undisputable

20 ⁵ See Exhibit A-2 and A-3 (explanation of benefits and an emergency room photo taken after the
surgical removal of her nail bed).

21 ⁶ On April 9, 2018 – ten (10) days after the parties' relationship terminated – the District
22 Attorney notified Christina that a criminal complaint had been filed against Plaintiff in the Clark
County Justice Court. See, Declaration of Mamer at ¶7 (Ex. A) and (Ex. A-1). This contradicts
23 Plaintiff's unsupported allegation in his Response that any conversations with the District
24 Attorney's Office between April, 2018 and January, 2019 were unprotected because no legal
proceedings had been initiated.

1 evidence that in actuality, a large portion of Plaintiff's Complaint relies on alleged defamatory
2 statements from the transcript of Christina's compelled testimony before the Clark County
3 Grand Jury in December 2018, and/or the Indictment filed by the Clark County District
4 Attorney's Office in the Eighth Judicial District Court, State of Nevada in January 2019,
5 Plaintiff's has another about-face moment in his Response.

6 Plaintiff's sealed Response, at pages 9 and 10 allege that Christina had "non[-]judicial"
7 and "non[-]law enforcement" communications with representatives of the Clark County District
8 Attorney's office in which she falsely accused Plaintiff of criminal activity. First and foremost,
9 Plaintiff's Complaint is devoid of any such allegations. Christina has to guess what Plaintiff
10 even means by such allegations. Is Plaintiff alleging that if she met with a Deputy District
11 Attorney at the District Attorney's offices, to prepare for her grand jury testimony, such conduct
12 would be "non-judicial" or "non-law enforcement," or is he alleging, without a factual basis, that
13 Christina defamed Plaintiff to a representative from the District Attorney's office in a social
14 setting?

15 Second, Plaintiff's Response contains no admissible evidence that such alleged
16 conversations actually took place, who was present at the discussions, or what was allegedly
17 said. Instead, as with all of Plaintiff's Response, he relies on conclusory allegations that
18 Christina is a liar so she must have had a conversation with the District Attorney and lied to him
19 too.

20 Presuming that Plaintiff is alleging that Christina met with representatives of the District
21 Attorney's office in an official capacity following Plaintiff being charged with domestic
22 violence, Plaintiff cites to no case law to dispute that such communications would fall under
23 NRS 41.637(3). In fact, to the contrary, courts have consistently held that a defendant's
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1 reporting of suspected criminal activity to law enforcement (police or district attorney) is within
2 the ambit of the anti-SLAPP statutes (i.e. written or oral statement made in direct connection
3 with an issue under consideration by a legislative, executive or judicial body, or any other
4 official proceeding authorized by law). Banerjee v. Cont'l Inc., Inc., No. 2:17-CV-00466-APG-
5 GWF, 2018 U.S. Dist. LEXIS 17387, at *5-7 (D. Nev. Feb. 1, 2018) (Judge Gordon, in a
6 comprehensive decision granting an anti-SLAPP motion to dismiss noting, “[r]eports to police
7 regarding possible criminal activity fall within the anti-SLAPP statute’s coverage. Nev. Rev.
8 Stat. § 41.637(3)” (citing Lawrence v. Krahne, No. 66595, 2015 WL 5545555, at *1 (Nev. Ct.
9 App. Sept. 16, 2015) (good faith statements to law enforcement about alleged threats were
10 protected activity) (unpublished).

11 **3. Domestic Violence is an Issue of Public Interest.**

12 Plaintiff argues in his Complaint that Christina falsely represented to the Review Journal
13 that the parties entered into a sex contract, that Plaintiff drafted, and therefore, the Review
14 Journal’s publication of purported written terms of the sex contract was defamation because
15 Christina lied about the existence of the contract. As outlined above, while Plaintiff initially
16 alleged Christina made up the existence of the sex contract, Plaintiff’s allegations are very much
17 a moving target. When faced with Christina’s disclosure of the parties’ fully executed sex
18 contract, Plaintiff admitted in his Response that he did in fact download and disseminate the
19 contract to Christina, and does not dispute that the sex contract Christina produced contained the
20 provisions cited in the Review Journal articles. The remainder of allegations in the Review
21 Journal articles came directly from Metro’s official reports.

22 Here, Plaintiff offers no admissible evidence or case law to support his allegation that
23 Christina’s alleged statements to the Review Journal were not a matter of public interest because
24

1 they concerned domestic violence. Additionally, Plaintiff concedes he is a public figure. Simply
 2 put, the articles Plaintiff alleges contained defamatory statements, to which he does not challenge
 3 the authenticity, best support Plaintiff is in fact a public figure and that the issue involved a
 4 matter of public interest.⁷

5 In addition to the case law cited in Christina's special Motion to Dismiss, California
 6 courts have repeatedly held that "[d]omestic violence is an extremely important issue in our
 7 society," and public statements concerning alleged instances of domestic violence - especially
 8 accusations involving public figures - are protected."⁸ Raymondo McDonald v. Kelley Wolff,
 9 Case No. 1:15-CV-278108 (Super. Ct. Cal., County of Santa Clara, June 4, 2016). Accord,
 10 McGarry v. University of San Diego, 154 Cal. App. 4th 97, 109-110 (Cal. Ct. App. 2007). All of
 11 the Review Journal articles that Plaintiff complains of relate directly to domestic violence
 12 investigated by Metro and are protected.

13 **B. Plaintiff's Response Fails to Satisfy the**
 14 **Second Prong of the Anti-SLAPP Analysis.**

15 Plaintiff's Response does not even come close to satisfying his burden, with competent
 16 evidence, to demonstrate that he has a probability of prevailing on his claim. Plaintiff's
 17 Response admits key facts as noted above. Plaintiff's Response carefully avoids certain issues.
 18 Moreover, Plaintiff's Response is unsupported with any Declarations or competent evidence to

19 _____
 20 ⁷ See ECF No. 9 at Exhibits A-9 at DEFM-000038 "Member of Crescent Hardy's campaign fired
 21 after alleged domestic dispute"; Plaintiff is a "skilled operative" DEFM-000039; Plaintiff served
 22 as a "spokesman and high-level staffer on a number of national campaigns, including Mitt
 23 Romney's 2012 presidential campaign and the anti-recall campaign of Wisconsin Gov. Scott
 24 Walker in 2012 DEFM-000043.

⁸ A copy of the McDonald decision is attached hereto as Exhibit B given that such decision is
 unavailable on Westlaw or LexisNexis to the best of the undersigned's knowledge. ***The***
McDonald decision is very similar to this case both in the nature of the allegations at issue
and the lack of supporting proof offered by the Plaintiff to the anti-SLAPP motion to dismiss.

1 support his position. Furthermore, Plaintiff's Response fails to meaningfully address any one of
2 the number of defenses that exist in this case (e.g. truth, statements of opinion, privileged
3 communications to law enforcement, privileged communications in the course of judicial
4 proceedings, public figure protections).

5 As noted in the opening brief, it is not Christina's burden to negate Plaintiff's defamation
6 case in the second prong of the anti-SLAPP analysis. Rather, it is Plaintiff's burden to
7 demonstrate, with competent evidence at this juncture of the case, that he has a probability of
8 success on his claims. Plaintiff's Response does not come close to satisfying this burden.
9 Accordingly, the Court should conclude that Plaintiff cannot satisfy the second prong of the anti-
10 SLAPP analysis.

11 **IV. CONCLUSION**

12 For the reasons stated herein, Defendant respectfully requests this Court to enter an order
13 pursuant to NRS 41.660 granting its Special Motion to Dismiss and make an award of attorney's
14 fees and costs allowed by the statute.

15 Dated this 22st day of May, 2020.

SANTORO WHITMIRE

/s/ James E. Whitmire

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May, 2020, I electronically filed the foregoing:
**DEFENDANT CHRISTINA MAMER'S REPLY TO PLAINTIFF'S RESPONSE TO
SPECIAL MOTION TO DISMISS PURSUANT TO NRS 41.660**, with the clerk of the Court,
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